



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 16226771

Date: AUG. 16, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an aerospace engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under *Dhanasar*'s three-prong analytical framework.

The Petitioner proposes to “work in [REDACTED]” The Petitioner further described:

A space rendezvous is an orbital maneuver during which two spacecraft[s], one of which can be a space station or satellite, arrive at the same orbit and approach to a very close distance (e.g. within visual contact). Rendezvous requires a precise match of the orbital velocities and position vectors of the two spacecraft[s]. Rendezvous may or may not be followed by docking or berthing, procedures which bring the spacecraft into physical contact and create a link between them.

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the Petitioner's proposed endeavor met the substantial merit and national importance requirements.

The second prong shifts the focus from the proposed endeavor to the petitioner in order to determine whether he or she is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The record includes documentation of his curriculum vitae, academic credentials, published articles, and conference presentations and abstracts. He also offered a statement regarding his future plans and letters of support discussing his graduate research and work under the guidance of [REDACTED] [REDACTED] director of [REDACTED] at the University of [REDACTED] [REDACTED], [REDACTED] and CEO of [REDACTED]

The record reflects that the Petitioner provided three letters of support from [REDACTED] At initial filing, [REDACTED] stated:

I have overseen [the Petitioner's] education and research over the course of his Master's degree in Astronautical Engineering. Moving forward to his Doctoral Degree, I have been involved closely with his groundbreaking research as his primary thesis advisor and chair of his dissertation committee

. . . .

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

While working towards the doctorate degree at [redacted] [the Petitioner] has been the lead researcher, reporting directly to me, on a [redacted] [redacted]-supported project on [redacted] docking methods for space vehicles to enable next-generation commercial and national security applications in Earth orbit He has presented his research to a consortium of [redacted] servicing companies, the [redacted] [redacted], along with representatives from [redacted] all of whom are very interested in defining how this future regulatory framework will affect the commercial [redacted] industry as a whole, both in the US and worldwide He has also published the results from his significant work and presented it at two subsequent [redacted] [redacted] which is one of the most prestigious conferences related to astronautical engineering that is attended by the international scientific community.

. . . .

[The Petitioner] has led a team of twenty students and recent engineering graduates to design, build, and test a small [redacted] at [redacted] to deliver to a [redacted] company with the goal of delivering their payload to orbit the Earth. This payload, built by our customer [redacted], will enable the next generation of [redacted] by bringing to the industry the possibility of software-defined [redacted]. . . .

In response to the Director's request for evidence [redacted] stated:

[The Petitioner's] specific work has been recognized in the Space field through his impact to the [redacted] consortium technical development The set of risk metrics and technical algorithms that [the Petitioner] created, to define the process of safe, low risk, and reliable [redacted] are currently being used by the [redacted] consortium and their member companies to assess their [redacted] missions for risk and compliance to guidelines.

. . . .

[The Petitioner] presented information about his critical systems engineering role on the third [redacted] project out of [redacted] Among the team of over a dozen students that were working on this project, [the Petitioner] was the only Systems Engineer for the project, and the only one with the skills and the qualifications to perform this role

On appeal, [redacted] stated:

[The Petitioner's] work has made additional significant impact and served to advance progress in the field as well as affected practices. For instance, [redacted] submitted the first policy guidelines (as a global worldwide standard for future [redacted] activities) to the International Standards Organization (ISO) in [redacted] Most spacefaring countries, including Russia/China, are part of ISO. Specifically and as stated earlier, [the Petitioner] and I contributed technical data (to sections 1.4.1 and 1.4.2 of the [redacted] Recommended Design and Operations Practices document, published on [redacted]

2019) and published internationally recognized papers to help make the case that the first ISO standard for this field should come from [redacted] [T]he [redacted] leadership presented the policy guidelines to the United Nations Committee on the Peaceful Uses of Outer Space (UN-COPUOS) on [redacted] 2019

....

....

The other important project I had referenced in the original filing concerned [redacted] [redacted]'s 3rd [redacted] for the U.S. start-up company, [redacted]. Note again that [the Petitioner] played a critical role on the project as the only one with the knowledge and qualifications in systems engineering (design and testing of the entire spacecraft) and spacecraft dynamics modeling to lead this project

Regarding [redacted], the Petitioner provided several other letters of support discussing the Petitioner's research and work while attending [redacted] for his graduate studies.⁴ For example, [redacted] vice president of [redacted], who hosts [redacted] interns, indicated the Petitioner's work on "the design of a [redacted] support vehicle" referenced by [redacted]. Similarly, [redacted] lecturer at [redacted] stated that the Petitioner "was the lead engineer and worked to optimize the overall systems and lead a team of around 20 graduate students and professional engineers to integrate the design into the final product," and the [redacted] "will enable the next generation of [redacted] by bringing to the industry the possibility of software-defined [redacted]." As it relates to [redacted], the Petitioner offered background information about the organization, a copy of the Petitioner's presentation made to [redacted] and a copy of [redacted]' presentations to the United Nations.

As discussed above, the Petitioner primarily claims eligibility under *Dhanasar*'s second prong based on his graduate work with [redacted] and [redacted].⁵ As it pertains to [redacted], the Petitioner did not demonstrate how his role under [redacted] in leading students and recent graduates in a [redacted] test as part of his graduate studies reflects that he is well positioned in the field. The Petitioner did not show, for example, that the testing has affected the aerospace or [redacted] field or otherwise represents a record of success or progress rendering the Petitioner well positioned to advance his proposed endeavor; the record does not indicate an impact in the field beyond [redacted].⁶

Regarding [redacted] working with and under the direction of [redacted], the Petitioner contributed technical data to two sections of the "[redacted] Recommended Design and Operations Practices document," which was presented to the United Nations. Although he assisted [redacted] with the two sections of the [redacted] as well as made a presentation before the organization, the Petitioner did not establish that the extent of his role and overall contributions to [redacted] sufficiently demonstrates that he is well positioned to advance his proposed endeavor.

⁴ While we discuss a sampling of letters, we have reviewed and considered each one.

⁵ In response to the Director's request for evidence and acknowledged by [redacted]'s letter on appeal, the Petitioner provided evidence relating to research and projects occurring after the initial filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1).

⁶ [redacted] indicated that [redacted] went bankrupt and is now owned by [redacted] who is working on a new [redacted] contract with him.

Further, in listing the evidence submitted by the Petitioner, the Director indicated “an unsigned FDP Cost Reimbursement Sub award.” [redacted] states that “[t]his could be the [redacted] government funding (amount of \$300K+) letter, and:

I also provided a follow up document (dated 10/11/2019) which shows an increase in funding for the [redacted] project based on the outstanding work that I and [the Petitioner] executed, and it was signed by [redacted] who is [redacted]’s Contract and Grant Officer as well as [redacted] who is [redacted]’s Contracts Manager. Again these are valid documents that can be provided to certify real funding from a USG agency to [redacted] that funded [the Petitioner’s] work efforts that he contributed directly to.

Please further note that the funding documents reference [redacted] as the institution that is receiving the government funding. [redacted] is a contracting company that has facilitated the collaboration between [redacted] and [redacted]. The fact that [the Petitioner’s] name is not on the funding documentation should not detract, in any way whatsoever, from his recognized, outstanding leadership work. It is very normal and standard procedure in the case of government funding for the institute that is receiving funding to be named and not any individual person. On the original contracts only the PI (myself) is named as the technical representative, but internal to [redacted] in execute was funded by me through [redacted] to support this effort directly.

In *Dhanasar*, the record established that the petitioner “initiated” or was “the primary award contact on several funded grant proposals” and that he was “the only listed researcher on many of the grants.” *Id.* at 893, n.11. Despite [redacted]’s claims, the record does not show that the Petitioner (rather than [redacted]) was mainly responsible for obtaining funding for [redacted]’s research projects. While [redacted] as well as other universities and organizations, have designated personnel to handle contracts and funding, the Petitioner did not demonstrate that he was essential or critical to [redacted] receiving such funding.

In addition, the Director stated that “[a]ccording to Google Scholar at the time of filing the [Petitioner] had approximately six publications which had received seven citations, in which, the majority of citations were self cites by the [Petitioner] and his collaborators.” On appeal, [redacted] contends that “I want to state that the work [the Petitioner] is doing work [*sic*] in a field itself that is so pioneering and new that it is not possible to have hundreds of citations immediately and it would be inaccurate to compare his citations to others in different (more established) fields.” The Director, however, did not require the Petitioner to have hundreds of citations or compare his citations with others, even in different fields. Rather, the Director indicated that his publications received six citations with the majority being self-citations. We note that while in our *Dhanasar* precedent decision we listed Dr. Dhanasar’s “publications and other published materials that cite his work” among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found “[t]he petitioner’s education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research.” *Id.* at 893. Here, the Petitioner did not show the significance of his published works or that they garnered a level of interest sufficient

to demonstrate that he is well positioned to advance his endeavor. Although [] argues that the Petitioner “wrote about his research findings related to [] in a conference publication” and “won Best Paper” at the “10th [] Conference, as well as presentations in other conferences, he did not further elaborate and explain how the field has been affected by the paper beyond being later published in a journal after he filed the petition.

As it pertains to the Petitioner’s education, while his master of science degree from [] renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including “two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering.” *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

The record demonstrates that the Petitioner has conducted and published research while pursuing his master and doctorate degrees at [] but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his work has served as an impetus for progress in the astronautical field or that it has generated substantial positive discourse in the space industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to []s.

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. Accordingly, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.